

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9862 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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SHASHIKALABEN MANGALDAS PATEL

Versus

DISTRICT PRIMARY EDUCATION OFFICER

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Appearance:

MR SP HASURKAR for Petitioner

MR HS MUNSHAW for Respondent No. 1

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 10/01/97

ORAL JUDGMENT :

Rule. Mr. Munshaw waives service of rule on behalf of respondent.

I have heard learned counsel and perused the reply.

The petitioner is desirous of an appointment as a

Primary School teacher for which she had applied in response to the notice inviting applications. At the time of making application, the petitioner had not received the marksheet of the Diploma in Tailoring although the same had been duly received by the petitioner at the time when the interviews were held and she also wanted to produce the same at the time of interviews but the same was not entertained by the respondent. Had the marksheet been entertained, the petitioner would have got 2 marks more for the said Diploma in Tailoring.

The reply filed on behalf of the respondent shows that in order to fill up 324 posts of Primary School Teachers, the candidates, who had secured marks upto 71.78% had been called whereas the petitioner's percentage was taken to be 71.42 only because the marks on account of the Tailoring Diploma were not added to her credit, merely because at the time of the making of the application, the marksheet had not been issued to the petitioner by the concerned Institute, although she had passed the Diploma in Tailoring. Thus it was beyond the control and comprehension of the petitioner to file the marksheet alongwith the application and as soon as it became available she was ready and willing and did produce the same at the time of interviews but the same was not entertained. Thus it is a case in which the petitioner i.e. the candidate with higher merit has been kept out of consideration for a reason which was beyond her control and comprehension.

Be that as it may, the petitioner - a candidate with higher merit can not be elbowed out from the consideration on such a jejune ground and the merit can not be allowed to be a casualty. Thus it is clear that the petitioner should also have been called for consideration for the post of Primary School Teacher.

Looking to the facts and circumstances of this case, while issuing notice on 4.12.96 this Court had directed the concerned authorities not to finalise and publish the select list pursuant to the advertisement dated 10.11.94 till 10.12.96 and this interim order dated 4.12.96 has been continued till today. Therefore, the respondents may now give credit of the marks corresponding to her qualification of Diploma in Tailoring held by the petitioner and, thereafter, if the petitioner is found to be suitable so as to be included in the select list, her name may be included in the select list and only thereafter the select list may be published and the appointment orders be issued

accordingly.

This Special Civil Application is accordingly  
allowed and the Rule is made absolute in the terms as  
aforesaid. No order as to costs.

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